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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of the)
Telecommunications Act of 1996)
)
Amendment of Rules Governing)
Procedures to Be Followed When)
Formal Complaints Are Filed Against)
Common Carriers)

CC Docket No. 96-238

PETITION FOR RECONSIDERATION OF

AMERICA'S CARRIERS
TELECOMMUNICATION ASSOCIATION
("ACTA")

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America's Carriers Telecommunication Association ("ACTA"), by its attorneys, submits this Petition for Reconsideration of Report and Order, released November 25, 1997, in CC Docket No. 96-238 ("R&O")¹, and published in the Federal Register December 18, 1997. ACTA is a national trade organization whose membership consists primarily of interexchange carriers, and also includes operator service providers, payphone vendors, competitive local service providers, equipment vendors, consultants and others interested in, and dependent upon, the advancement and maintenance of fair and equal competitive conditions in the present and future telecommunications marketplace. Reconsideration is requested of the following provisions of the Commission's R&O.

I. Applicability of Section 208(b) Deadline

The Commission concludes in ¶ 37 of the R&O that the deadline contained in Section 208(b) "applies only to formal complaints which involve 'investigation[s] into the lawfulness of a charge, classification, regulation or **practice**' contained in tariffs filed with the Commission." (Emphasis added.) This conclusion is not consistent with principles of statutory construction or the public interest.

In making its interpretation, it is clear that what the Commission has done is to narrowly focus on the presence of the language "lawfulness of a charge, classification, regulation or practice" in the Act's tariffing provisions of Section 203. Unquestionably, this venerable string of terms does refer to tariffs, and it is clear that "charges, classifications and regulations" are unlikely to be lawful if not contained in a tariff.

The same is not true of "practices." Not all carrier practices are, nor need to be, contained in a tariff. Indeed, many of the practices of carriers which cause complaints cannot be contained in

¹ References to the R&O will be by paragraph number.

a tariff because they are inherently unlawful or questionable. This is particularly true in regard to the anti-competitive practices of many incumbent carriers in their dealings with reseller carriers and/or interconnecting carriers. The Commission may take official notice of this fact from the numerous formal complaints which have been filed by resellers and other carriers against incumbent local and long distance facilities-based carriers over the years.

This fact must be coupled with the long-standing language of Section 208 itself, language not changed by the Telecommunications Act of 1996. That language provides for a broad-based foundation for complaints against carriers, not just those based on tariffed provisions.

(a) Any person . . . complaining of **anything done or omitted to be done by any common carrier subject to this Act, in contravention of the provisions thereof,** may apply . . . by petition . . . If such common carrier shall not satisfy the complaint, **it shall be the duty of the Commission to investigate the matters complained of**
...

(Emphasis added.)

The quoted language of section 208(a) clearly contradicts the interpretation of Section 208(b) that Congress intended that only complaints based on tariffs were subjected to the new five month processing time frame. Moreover, given the fact that investigations of complaints based on the anticompetitive and other unlawful practices of incumbent carriers have historically failed to be concluded within reasonable time frames, the remedial purposes of Section 208(b) are most appropriate and unquestionably required in the public interest.

The Commission's analysis that "there is little guidance in Section 208 itself for defining the subset of complaints covered by Section 208(b)" begs the question. ACTA submits that the reason there is no guidance for defining any subset because 208(b) was never intended to apply to any

“subset.” Section 208(b) was intended to apply to all types of complaints filed against carriers as the language quoted above establishes.

The Commission’s argument (§ 36) that because Congress specified specific resolution deadlines for complaints filed pursuant to Sections 260, 271, and 275, “and was silent as to deadlines for resolving complaints arising from other sections of the Act, Congress did not intend to mandate deadlines for resolving all complaints” also is without merit. The Commission’s analysis fails to consider that the deadlines for complaints filed pursuant to Sections 260, 271, and 275 are even shorter than the deadline contained in Section 208(b). Such an analysis would necessarily lead to the opposite of the conclusion the Commission reached. Congress must have intended that all complaints under Section 208 be processed within at least five months because it clearly provided that particular types of complaints had to be processed in even shorter time periods.

Further, given that the Commission remains intent on doing away with tariffs, its interpretation that Section 208(b) applies only to tariffs is astounding. At one and the same time, the Commission interprets Congressional intent to have imposed a tight processing time limit on complaints which, if the Commission is successful in sustaining its detariffing ruling, will have no application. Such a reading of a landmark statutory enactment is unsupportable.

And finally, that Congress clearly included Section 208(b) within its intent to expedite Commission dispute processes can be further seen from the fact that the prior deadline of twelve months has not been complied with and this time in 1996, Congress not only shortened the time frame by more than half, it specifically provided that the action of the Commission had to be a final, appealable decision. In sum, Congress could not have been more clear in conveying its intent throughout the Telecommunications Act of 1996 that competition was to be promoted and that in

support of that goal the Commission had to speed the process to resolve **all disputes** (not just those based on tariffs) in an expeditious manner.

ACTA appreciates the Commission's express statement (§ 243) that complainants always have the option of filing their complaints in federal court if they conclude that the Commission's rules do not afford them the pleading opportunities they need. This is important guidance for the courts and future complainants.

II. Service of the Complaint

The Commission amended Section 1.47 of its rules to provide that "every common carrier . . . shall designate an agent in the District of Columbia, and may designate additional agents if it so chooses, upon whom service of all . . . process of the Commission may be made for and on behalf of said carrier in any proceeding before the Commission." In Paragraph 67 of the R&O, the Commission discusses ACTA's proposal to permit designation of service agents outside of the District of Columbia. The Commission stated that ACTA's proposal "was based on the incorrect premise that overnight delivery would fulfill our requirement of having the complainant personally serve the complaint on the defendant. It will not. Only hand delivery constitutes personal service for the purposes of our service requirement." ACTA supported the proposal to require the complainant to effect service on the defendant carrier,² and did not misunderstand the necessity for personal service of the complaint as required by 47 U.S.C. § 413. ". . . ACTA recommends that parties be required to serve whomever a carrier designates in addition to effecting service which will satisfy the requirements of 47 U.S.C. § 413. ACTA recognizes that the Commission cannot change

² Comments of America's Carriers Telecommunication Association, January 6, 1997, at ¶ 6.

a statute in a rulemaking proceeding. However, with nationwide overnight delivery available, to limit the service requirement to, in most cases, an artificial agent in the District of Columbia seems unnecessarily inefficient. Such will cause the loss of at least one day in getting documents to those who actually need them in order to respond to them, and may lead to confusion and additional requests for delay.”³ ACTA was recommending that the Commission require, in addition to the personal service of process on an agent within the District of Columbia, and not in lieu thereof, that the Complainant also be required to serve process upon whomever a carrier designates, by some expeditious method such as overnight delivery or by facsimile. This extra step would ensure that the defendant carrier would actually receive a copy of the complaint at least by Day 2, which is important in view of the new and stringent time limits.

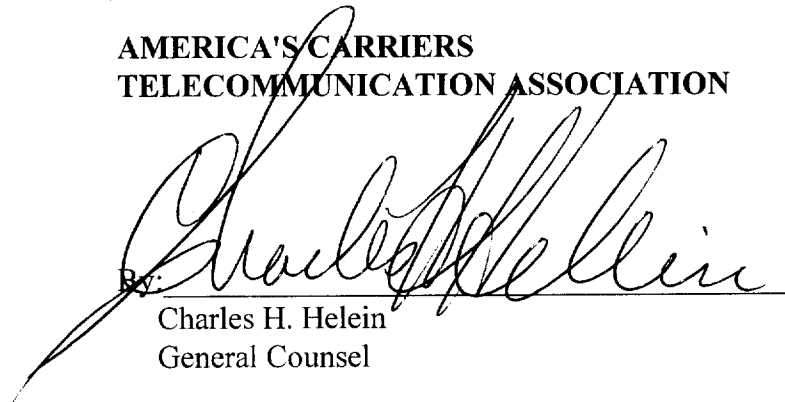
The amendment to Section 1.47(h) does provide that a carrier, besides designating an agent in the District of Columbia, may designate additional agents (other than one in the District of Columbia) if it so chooses. The amendment to Section 1.735(d) provides only that the complaint must be served “by hand delivery on one of the named defendant's registered agents for service of process” on the same date that the complaint is filed. However, although the rule appears to allow personal service on the additional agent, it does not appear to impose any requirement to serve the additional agent (which, if designated, is no doubt the party who actually needs a copy of the complaint) by any method whatsoever. ACTA recommends that complainants be required to provide a copy of the complaint to any additional agent designated for service of process (but no

³ Id.

more than one additional agent) by overnight mail or by facsimile in addition to the personal service requirement already contained in the Commission's rules.

Respectfully submitted,

**AMERICA'S CARRIERS
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